



April 27, 2000

Mr. Mark A. Flowers
Assistant Attorney General
City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

OR2000-1666

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134708.

The City of Midland (the "city") received a request for incident report number 0001280033. You have highlighted portions of information in the incident report which you claim are excepted from disclosure under Chapter 730 of the Texas Transportation Code, the common law right of privacy, the informer's privilege, and section 552.108 of the Government Code.

We first address your assertion under section 552.108.¹ You argue that, because incident report number 0001280033 pertains to a pending investigation, the city is not required to release any information other than the "basic information." Section 552.108(a)(1) of the Government Code excepts from required public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

After reviewing the highlighted information marked in the incident report, we conclude that you have met your burden of establishing that the release of this information at this time

¹The city raised both 552.108(a)(1) and 552.108(a)(2). The protections offered by section 552.108(a)(1) and 552.108(a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law-enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication.

could interfere with the prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

As you noted, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The kinds of basic information not excepted from disclosure by section 552.108 are those that were deemed public in *Houston Chronicle* and catalogued in Open Records Decision No. 127 (1976). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report.²

After careful review of the information that the city has highlighted, we do not consider any of it to be basic information. Therefore, under section 552.108(a)(1), the city may withhold the highlighted information in incident report number 0001280033.

As for the drivers’ license information pursuant to Chapter 730 of the Texas Transportation Code, we raise section 552.130(a) of the Government Code, which provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

1. a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;
2. a motor vehicle title or registration by an agency of this state; or
3. a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

We note that all the drivers’ license number, license plate number and vehicle identification number information has been highlighted in the incident report. This office has determined that drivers’ license number, license plate number and vehicle identification number information is made confidential under section 552.130(a). Therefore, this highlighted information must also be withheld from disclosure under section 552.130(a).

²A list of the various kinds of information that constitute basic information can be found in the 2000 Texas Public Information Handbook. The handbook is available online at the Office of the Attorney General’s web site at www.oag.state.tx.us.

Finally, we address your argument against disclosure of the social security numbers in the incident report. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You do not cite any provision of law enacted on or after October 1, 1990 upon which the city relies to make confidential the social security numbers it obtains and maintains. We, therefore, have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure on the basis of that federal provision. However, if the social security numbers were obtained or are maintained pursuant to any provision of law enacted on or after October 1, 1990, they are confidential and must be withheld.

Because we are able to make the above determinations, we need not address your arguments regarding common law privacy and the informer’s privilege. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

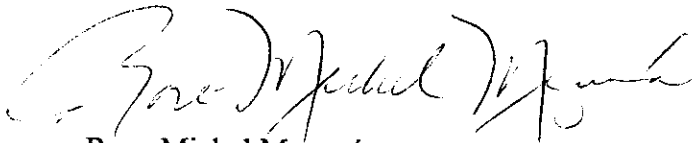
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should

report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguía".

Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/nc

Ref: ID# 134708

Encl. Submitted documents

cc: Ms. Connie McNew
589 Howard
New Braunfels, Texas 78130
(w/o enclosures)